

APPEAL NO. 022110
FILED SEPTEMBER 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 27, 2002. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to and include bilateral L4 to S1 facet syndrome, lumbar facet joint arthrosis, arthropathy, annular tears at L4-5 and L5-S1, degenerative changes (disc disease), and L5-S1 disc bulge; that the claimant did not have disability resulting from an injury sustained on _____, during the year 2002; that the respondent (carrier) did not waive the right to dispute the extent of injury by failing to timely do so; and that the carrier did not waive the right to dispute the extent of injury by failing to adequately do so. The claimant appealed, asserting that the hearing officer erred as a matter of law and on sufficiency of the evidence grounds. The carrier responded, urging affirmance.

DECISION

Affirmed.

On appeal, the claimant argues that the carrier waived its right to contest the extent-of-injury issue by failing to timely dispute it. The hearing officer did not err in determining that the carrier did not waive the right to contest the compensability of the multiple claimed injuries by not timely contesting the injury in accordance with Section 409.021. Whether the compensable injury included the additional claimed injuries was an extent-of-injury question. See Texas Workers' Compensation Commission Appeal No. 002228, decided November 8, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) "do not apply to disputes of extent of injury." Accordingly, the hearing officer properly concluded that the carrier did not waive the right to contest the compensability of the claimed injuries.

The claimant next asserts that the carrier did not adequately contest the extent of injury and has therefore waived its right to do so. We note that whether or not the carrier adequately contested the claimed injuries was a question of fact for the hearing officer. Finding sufficient evidence to support the hearing officer, we will not disturb that determination on appeal.

We have reviewed the complained-of determinations of extent of injury and disability and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. The issues presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issues. It was for the hearing officer, as the trier of fact, to

resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations on extent of injury and disability are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LEGION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

CONCUR IN THE RESULT:

Gary L. Kilgore
Appeals Judge